

# TOWNSHIP of BRICK

## TOWER LEASE AGREEMENT – MONOPOLE LOCATION FCC SITE REG # 1062790

**THIS TOWER LEASE AGREEMENT** (this “Lease”) is made and entered into this 10<sup>th</sup> day of January 2015, between the Township of Brick, a Municipal Government concern (“Landlord”), and Brick Township Board of Education (“Tenant”).

### RECITALS

A. The “Landlord”, the Township of Brick, a Municipal Government concern, currently owns the land, the tower, shelter building, antenna coax and antenna currently located at 401 Chambers Bridge Road as described.

B. Tenant desires to obtain the right from Landlord to use a portion of the Shelter Building and Tower at the Site for the purposes of placing, operating and maintaining at the Site, Tenant’s telecommunications equipment. Landlord is willing to grant such a right to Tenant for such purpose subject to the terms and conditions set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and payment of rent by Tenant and keeping and performance of the covenants and agreements by Tenant under this Lease, Landlord and Tenant hereby agree as follows:

#### **ARTICLE 1 -- BASIC LEASE INFORMATION**

1.1 Basic Lease Information. In addition to the terms that are defined elsewhere in this Lease, the following terms are used in this Lease:

- (a) LANDLORD: Township of Brick
- (b) LANDLORD’S ADDRESS: 401 Chambers Bridge Road  
Brick, NJ 08723  
Reg. # 1062790

With a copy to:

- (c) TENANT: Brick Township Board of Education
- (d) TENANT’S ADDRESS:
- (e) PREMISES: **Exhibit A:** Antenna, Coax are currently located at **Mount 2** of the Mono-Pole Tower, at the 120” level, mounted on the South side of the pole, utilizing a Phelps-Dodge PD455-6 Super Station Master Antenna and Celewave 7/8” dielectric foam filled cable terminating to a Poly-Phaser which’s terminates at the north wall of the protected building shelter located at 401 Chambers Bridge Road site. The Poly-Phaser is connected to the R-56

building ground halo, utilizing a stranded #6 cable utilizing irreversible type clamping mechanism.

(f) Space on the Tower in the dimensions and locations as more particularly shown on **Exhibit B-1** attached, and a portion of the existing Shelter Building consisting of approximately 3 rentable square feet, as shown on **Exhibit B-2**.

(g) EQUIPMENT: All equipment and personal property listed on **Exhibit B (FUTURE)** attached, together with any other equipment placed on the Premises by Tenant in accordance with Article 4 hereof.

(h) COMMENCEMENT DATE: February 1, 2015.

(i) EXPIRATION DATE: January 31, 2016.

(j) TERM: 12 months, beginning on the Commencement Date and expiring on the Expiration Date.

1.2 Exhibits. The following exhibits are attached to this Lease and are made part of this Lease:

EXHIBIT A Legal Description of the Site  
EXHIBIT B-1 Location on Tower  
EXHIBIT B-2 Equipment Location Plan in Rack 4 of Building  
EXHIBIT B-2 Equipment (Indicated as **FUTURE**)  
EXHIBIT C Access to Site – Owner Information

## ARTICLE 2 -- AGREEMENT AND USE

2.1 Lease. Landlord hereby leases the Premises to Tenant, for the placement, operation and maintenance of the Equipment and for no other purpose.

2.2 Term. The Term of the Lease shall begin on the Commencement Date and shall expire on the Expiration Date.

2.3 Use. Tenant shall use the Premises only for the purpose of placing, maintaining, and operating its Equipment and uses directly incidental thereto. Tenant will not use the Premises for any purpose prohibited by applicable law. Tenant will not commit waste and will not create any nuisance or interfere with, annoy or disturb any other tenant of the Site. It is further understood and agreed that Tenant's right to use the Premises is contingent upon its obtaining and continually maintaining in full force and effect, after the execution date of this Lease, all the certificates, permits, and other approvals that may be required by any federal, state, or local authorities. Landlord, at no cost to Landlord, shall cooperate with Tenant in its efforts to obtain such approvals. In the event that any of such applications should be finally rejected or any certificate, permit, license, or approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant will be unable to use the Premises for its intended purposes, this Lease shall automatically terminate.

2.4 Nonexclusive. Tenant acknowledges and agrees that Landlord, at its sole discretion, has the right to grant other licenses, leases or rights of use, of any kind or nature, to parties other than Tenant with respect to the Site, provided that any such uses entered into following the date of this Lease shall not unreasonably interfere with Tenant's operation of its Equipment.

### ARTICLE 3 -- RENT

3.1 Monthly Rent. Tenant will not be required to pay Monthly Rent to Landlord as rent for the Premises.

3.2 Utilities. Landlord shall provide a **single 20 AMP 120 VAC electrical circuit and direct UPS back-up utility power**, on-site generator and other utilities (heat and air conditioning) to the Premises.

3.2 Limitation on Liability. Landlord will provide for under this Lease or be liable to Tenant or any other person, for direct or consequential damages, or otherwise, for any failure to supply any electricity, security or other utilities, or for surges or interruptions of electricity, or other such services or utilities (heat or air conditioning).

3.3 R56 – NFPA 1221 Grounding. Landlord will provide national proven standards for grounding of Tenant provided equipment

### ARTICLE 4 -- ALTERATIONS; OPERATION OF EQUIPMENT

#### 4.1 Tenant's Facilities.

(a) Tenant will install and operate Tenant's Equipment in compliance with Landlord's technical standards, rules and regulations (collectively, "Rules and Regulations"). Landlord reserves the right from time to time to modify the Rules and Regulations. If at any time Landlord determines that the Equipment or installation of the Equipment does not meet applicable Rules and Regulations, Tenant will be responsible for the costs associated with the removal, modification to, or installation of additional equipment to bring the Equipment into compliance. Notwithstanding Section 10.1 (g), if Tenant fails to correct any non-compliance within 15 days after receipt of written notice of such non-compliance, then Landlord may remove the Equipment, or bring the Equipment into compliance, all at Tenant's sole cost and expense.

(b) Tenant will obtain Landlord's prior written approval, which approval shall not be unreasonably withheld, for the type, location, mounting and placement of Tenant's Equipment placed or relocated on the Premises. All proposed construction and installation performed on the Premises must be reviewed and approved in writing by Landlord prior to the commencement of such construction. All Equipment shall be installed by contractors approved by Landlord and subject to conditions specified by Landlord, and shall be performed in a good and workmanlike manner and in compliance with all applicable Laws (as defined in Section 7.1). Notwithstanding the foregoing, after the Commencement Date, Tenant may add new equipment to the Site, provided that Tenant obtain Landlord's prior written approval of any such additional equipment, which approval may be withheld in Landlord's sole discretion. In the event

equipment is added, Landlord and Tenant shall enter into a modification of this Lease to add such equipment to the Equipment listed on **Exhibit B** attached.

(c) Landlord's approval of any placement or specifications shall not be construed to be a warranty or representation that such plans or specifications are in conformity with any Laws or ordinances.

(d) Except as set forth in subsection (a) above, Tenant shall not make or allow to be made any alterations, additions, or improvements to or of the Premises.

#### 4.2 Operation of Tenant's Facilities.

(a) Tenant shall be responsible, at its sole cost, for the placement, installation, maintenance and replacement of its Equipment.

(b) Landlord will provide R-56 Grounding connection to the building shelter HALO GROUNDING SYSTEM along with the proper N-Connector and/or UHF Type antenna jumper and Poly-Phaser.

(c) Tenant shall not remove from the Site any valuable materials, minerals, coal, oil or gas or any other property not belonging to Tenant.

(d) Tenant shall protect the Premises from fire and report and suppress such fires as might occur.

(e) Tenant shall not allow debris or refuse to accumulate on the Premises.

(f) Tenant shall comply with all customary practices and courtesies in the use of the access road.

(g) Tenant shall operate the Equipment in such a manner that it will not interfere with or retard the operations of Landlord or other tenants on the Site. In the event Landlord should find that there is interference with the efficient operation of its existing communications facilities on the Site (which are in place as of the Commencement Date), because of Tenant's use of the Premises, Tenant shall be responsible for immediately removing the cause of such interference.

(h) If, in order to eliminate any interference with the operations of Landlord, it is necessary for Landlord to incur any expense, Landlord shall not be obligated to incur the same unless Tenant agrees in writing its willingness to indemnify Landlord for the full cost therefor. If Tenant is unwilling to so indemnify or if the cause of interference cannot be removed, either party may terminate this Lease by giving a 90-day written notice of such termination to the other party. Rent paid in advance shall be prorated to the date of termination.

(i) Landlord shall be the sole judge as to all requirements concerning communication facilities which it needs or which may be interfered with and as to whether there is, in fact, interference. Landlord's facilities as used in this paragraph shall mean facilities of Landlord, its successors or assigns and the facilities of associated or affiliated companies. Notwithstanding the foregoing, Landlord assumes no liability whatsoever or responsibility for approval of Tenant's Equipment and does not by accepting Tenant's evidence of non-interference waive any rights with respect to future interference or pass on the adequacy of Tenant's

Equipment for safety or other purposes. Tenant shall not change or add additional transmitting or receiving frequencies or equipment without submitting revised technical standards for approval. Tenant shall not raise effective radiated power beyond that authorized by the Federal Communications Commission.

(j) Tenant shall cease operation temporarily or reduce power if required by Landlord to conduct tests, perform tower work, or make emergency repairs. Such occasions, in so far as practicable, shall be preceded by notice and shall occur at times mutually agreeable to Landlord and Tenant.

4.3 Modification of Facility. If Landlord, by reason of its existing or planned communications operations, must add, change or improve its facilities at the Site, and would, by reason of these additions, changes or improvements, either need the Premises or need Tenant to change its Equipment in order to prevent any interference with Landlord's facilities, Landlord shall give Tenant 180 days' written notice of such need, and Tenant will have the responsibility to modify, change or correct its Equipment at its sole cost so no interference to Landlord's operation shall exist or to agree to relocate the Premises to another location at the Site. If Tenant is unwilling to assume the expense of such removal, modification, change or correction, this Lease shall terminate immediately upon written notice by Tenant to Landlord. Rent paid in advance shall be prorated to the date of termination and the unused portion of any prepaid rent shall be returned to Tenant.

4.4 Mechanic's Liens. Tenant shall not suffer or permit any mechanic's lien, or other lien, to be filed against the Premises, the Site, or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant, or anyone claiming under Tenant. If any such mechanic's lien, or other lien, shall at any time be filed against the Premises or the Site, Tenant shall cause the same to be discharged of record within 30 days of the date of filing the same, and if Tenant shall fail to discharge such lien within such period, then Landlord may, at its option, discharge the same by paying the amount claimed to be due without inquiry into the validity of the same, and Tenant shall thereupon reimburse Landlord for any payment so made. If Tenant desires to contest any claim of a lien, Tenant shall furnish to Landlord adequate security of at least 150% of the amount of the claim, plus estimated costs and interest and, if a final judgment establishing the validity or existence of any lien for any amount is entered, Tenant shall satisfy and pay the same at once, and, on receipt of notice of payment of any such final judgment, Landlord shall return any security paid.

4.5 Security.

(a) Landlord may from time to time, on 24 hour prior notice to Tenant, impose such reasonable restrictions on the time and means of access to the Premises as Landlord deems necessary for security precautions. Tenant can however gain emergency access by requesting access to secured building shelter by contacting the Watch Commander at the Public access window at Police Headquarters. The Watch Commander can provide the Tenant with access keys in the event emergency service of their equipment is required. **EXHIBIT C**

4.6 Safety. If during the installation or maintenance of Tenant's Equipment, Landlord determines that Tenant's activities or the Equipment are unsafe, pose a hazard or violate the Laws, then Tenant shall immediately, upon notice from Landlord, cease its operations, until such time as Tenant complies with the Laws. Notwithstanding the foregoing, Landlord may, at

Tenant's sole cost, make such repairs or install such equipment as Landlord deems necessary to ensure that Tenant's Equipment is safe and complies with all Laws.

## ARTICLE 5 -- MAINTENANCE

5.1 By Tenant. Tenant shall operate the Equipment with due care and maintain the Premises in a safe, clean and sanitary condition. Tenant shall, at its sole cost and expense, maintain the Premises and the Equipment in good repair and condition, exercising due regard for Landlord's and other tenants' equipment on the Site. All damage or injury to the Premises or the Site caused by Tenant, its agents, employees, or invitees may be repaired, restored, or replaced by Landlord, at the expense of Tenant. Such expense will be collectible as Additional Rent and will be paid by Tenant within 10 days after delivery of a statement for such expense.

5.2 By Landlord. Landlord will maintain, repair and restore the Site and the Tower in reasonably good order and condition, except as set forth in subsection 5.1 above.

## ARTICLE 6 -- INSURANCE AND WAIVER

### 6.1 Insurance.

(a) At all times during the term of this Lease, the TENANT will carry and maintain, at its own cost and expense:

(1) commercial general liability insurance for claims for bodily injury or death and property damage with combined single limits of not less than \$2,000,000 per occurrence, including coverage for premises-operations and contractual liability;

(2) insurance coverage on a broad form basis insuring against "all risks of direct physical loss" on all of Tenant's Equipment and personal property located on the Premises and the Site, in an amount not less than their full replacement value;

(3) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the state in which the Premises are located, including employer's liability insurance in the limits required by the laws of the state in which the Premises are located; and

(4) if Tenant operates owned, hired or non-owned vehicles on the property, comprehensive automobile liability insurance with a limit of not less than \$500,000 combined bodily injury and property damage.

(b) All such insurance shall be placed with insurers having a "Best's" rating of B+XIII and under such form of policies acceptable to Landlord. Tenant shall forward to Landlord certificates of insurance evidencing coverage prior to entering onto the Premises and upon renewal of coverage thereafter. Certificates shall provide that Landlord be named as an additional insured on all policies (except workers' compensation), that 30 days' prior written notice of material change or cancellation of coverage shall be provided to Landlord, that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by Landlord, and that the policy provides severability of interest/cross-liability coverage.

(c) Landlord's public liability and property damage insurance will not be carried for the benefit of Tenant, and Tenant will have no right or claim in the proceeds of any such insurance and no right of indemnity from claims on account of Landlord's insurance.

(d) Tenant will not act or permit acts upon the Premises that would jeopardize or conflict with fire insurance policies or increase the rate of fire insurance.

6.2 Landlord's Insurance. At all times during the Term, Landlord will carry and maintain fire and extended coverage covering the Tower in amounts determined by Landlord in its reasonable discretion. Landlord may satisfy its obligations hereunder through a program of self-insurance.

6.3 Waiver of Subrogation. Landlord and Tenant each waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint ventures, employees, agents, customers, invitees or business visitors of such party, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried pursuant to this section or any other property insurance actually carried by such party. Landlord and Tenant shall, from time to time, cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Tower or the Site or the contents of either.

6.4 Waiver and Indemnity.

(a) From and after execution of this Lease, Tenant assumes all risks of its own operations, and Tenant and its agents and independent contractors shall indemnify and hold harmless Landlord from and against any and all claims, actions, damages, liabilities and expenses, including costs and reasonable attorneys' fees, by reason of death or injuries to persons or damage to property arising either directly or indirectly out of: (i) the use, occupancy, or enjoyment of the Premises by Tenant, its agents, employees, or contractors, or any maintenance, repair, work, activity, or other things allowed or permitted by Tenant to be done or left undone in or about the Premises, the Building, or the Site; (ii) the actions or omissions of Tenant, Tenant's agents, servants, contractors, or employees, or of any other person entering onto the Premises, the Building, or the Site under express or implied invitation of Tenant; (iii) any breach or default in the performance of any obligation of Tenant under this Lease; (iv) the interference of the Equipment; or (v) any negligent or willful act or failure to act of Tenant, its agents, employees, or contractors. Tenant shall not, however, be required to indemnify Landlord to the extent such damages are caused by the gross negligence or willful misconduct of Landlord. Tenant's obligations under this Section shall survive expiration or earlier termination of this Lease.

(b) If the Premises or the Equipment are destroyed or damaged by any cause to such an extent or degree that Tenant suffers shut down of service or loss of revenue or property, Landlord shall not be responsible in any way for loss of such revenue or property. If Tenant cannot or chooses not to restore service within 90 days, either party may, at its option and without liability, terminate this Lease upon notice to the other party.

## ARTICLE 7 -- COMPLIANCE WITH LAWS

7.1 Tenant Compliance. Tenant shall comply with all federal, state and local statutes, ordinances, laws, rules and regulations of any public authority affecting the Premises and the Equipment and the use thereon, including, but not limited to, the U.S. Department of Labor,

Occupational Safety and Health Administration, the Federal Communications Commission (“FCC”) and the Federal Aviation Administration (collectively, the “Laws”). Tenant shall promptly correct, at Tenant’s sole expense (including without limitation payment of any fines or penalties), any noncompliance with the Laws. Tenant shall, at its own cost, obtain all federal, state and local permits and licenses necessary to operate under this Lease. If, as a result of Tenant’s operations or use of said Premises hereunder, any Laws are violated, Tenant shall protect, save harmless, defend and indemnify Landlord, its officers, employees and agents, against and from any and all penalties, fines, costs and expenses, including court costs and attorney fees, imposed upon or incurred by Landlord, its officers, employees or agents, resulting from, or connected with, such violation or violations, except for tower lighting and marking violations caused by Landlord’s negligence or willful misconduct. As an FCC Licensee, Tenant is required by Part 17 of the applicable FCC rules to ensure that Tower structures upon which its radio antennas are located satisfy certain lighting and marking specifications. As operator of the subject Tower, Landlord hereby assumes responsibility for ensuring that the Tower is operated in compliance with all lighting and marking requirements.

## 7.2 Environmental Matters.

### (a) Tenant’s Obligations.

(1) Tenant will not cause or permit the storage, treatment or disposal of any Hazardous Waste in, on, or about the Premises or any part of the Site by Tenant, its agents, employees or contractors. Tenant will not permit the Premises to be used or operated in a manner that may cause the Site or any part of the Site to be contaminated by any Hazardous Materials in violation of any Environmental Laws.

(2) Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents and employees harmless from and against all direct claims, costs, and liabilities, including reasonable attorneys’ fees and costs, arising out of or in connection with: (i) Tenant’s breach of its obligations in this Section; or (ii) Tenant’s introduction of Hazardous Materials to the Site. Tenant’s obligations under this Section shall survive the expiration or other termination of this Lease.

(b) Mutual Obligations. Each party will promptly notify the other party of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or enforcement cleanup or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws relating to any Hazardous Materials affecting any part of the Site; and (ii) all claims made or threatened by any third party against Tenant, Landlord or any part of the Site relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials on or about the Site or any part of the Site.

(c) Environmental Assessments. Landlord may, from time to time during the Term, conduct such environmental assessments or tasks as Landlord deems necessary, provided that Landlord will give Tenant reasonable prior notice of its entry on the Premises for such purposes and will cooperate in minimizing any disruption of Tenant’s use of the Premises as a result of such activity. Landlord will make available to Tenant copies of any reports or assessments so obtained by Landlord.

### (d) Definitions.

(1) “Hazardous Materials” means asbestos, explosives, radioactive materials, hazardous waste, hazardous substances, or hazardous materials including, without limitation, substances defined as “hazardous substances” in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U. S. C. Sections 9601-9657 (“CERCLA”); the Hazardous Material Transportation Act of 1975, 49 U.S.C. Sections 1801-1812; the Resource Conservation Recovery Acts of 1976, 42 U.S.C. Sections 6901-6987; the Occupational Safety And Health Act of 1970, 29 U.S.C. Sections 651 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, wastes or substances now or at any time hereinafter in effect (collectively, “Environmental Laws”).

(2) “Hazardous Waste” means hazardous waste as defined under the Resource Conservation Recovery Act of 1976, 42 U.S.C. Sections 6901-6987.

## **ARTICLE 8 -- END OF TERM**

8.1 Removal. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in good order and condition, and Tenant shall remove all of its Equipment. If within 30 days after the termination of this Lease Tenant has not removed its Equipment and property and not restored the Premises, Landlord may do so and Tenant shall reimburse Landlord for all expenses or costs for removal and restoration. Tenant’s obligations under this Section will survive the expiration or other termination of this Lease.

8.2 Holdover. Tenant will have no right to remain in possession of all or any part of the Premises after the expiration of the Term. If Tenant remains in possession of all or any part of the Premises after the expiration of the Term, with the express or implied consent of Landlord: (a) such tenancy will be deemed to be a periodic tenancy for the next 30 calendar days; (b) such tenancy, in excess of these first 30 calendar days will constitute an automatic renewal of this Lease for an additional one year term at a 3% monthly contract increase, retroactive to the expiration term date of the original agreement; and (c) such tenancy may be terminated by Landlord upon these first 30 days’ prior written notice or the earliest date permitted by law. In such event, (d) the specific 30 day holdover Monthly Rent will be increased to an amount equal to 150% of the contracted Monthly Rent payable during the last month of the Term. Any other sums due under this Lease will be payable in the amount and at the times specified in this Lease. Such first month tenancy will be subject to every other term, condition, and covenant contained in this Lease, except that any renewal, expansion or purchase options or rights of first refusal contained in this Lease shall be null and void during the first 30 days prior to the end of this contract.

## **ARTICLE 9 -- SECURITY DEPOSIT**

Tenant has deposited the Security Deposit with Landlord as security for the faithful and timely performance of every provision of this Lease to be performed by Tenant. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of Rent, Landlord may, at its sole option, use, apply, or retain all or any part of the Security Deposit for the payment of any Rent, or any other sum in default. If any portion of the Security Deposit is so used, applied, or retained, Tenant will, within 5 days after written demand, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. In no event shall Landlord be obligated to apply the Security Deposit. Tenant may not apply the Security Deposit to payment of rent or the performance of other obligations. The Security Deposit will not be deemed a limitation on Landlord’s damages

or a payment of liquidated damages or a payment of the Rent due for the last month of the term. If Tenant fully, faithfully, and timely performs every provision of this Lease to be performed by it, the Security Deposit or any balance of the Security Deposit will be returned to Tenant within 60 days after the expiration of the Term. Except as may be required by law, Landlord will not be required to keep the Security Deposit separate from its general funds, and may commingle the Security Deposit with its own funds, and Tenant will not be entitled to interest on the Security Deposit.

#### ARTICLE 10 -- DEFAULT

10.1 Events of Default. The following events are referred to, collectively, as “Events of Default” or, individually, as an “Event of Default”:

- (a) Tenant vacates or abandons the Premises;
- (b) This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment by any creditor of Tenant or claimant against Tenant, and said attachment is not discharged or disposed of within 15 days after its levy;
- (c) Voluntary or involuntary proceedings under any bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or insolvency act of any state or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment;
- (d) Tenant purports to assign this Lease, or sublet all or a portion of the Premises, in violation of the terms hereof; or
- (e) Tenant shall fail to correct and eliminate interference caused by its Equipment; or
- (f) Tenant shall fail to perform any of the other agreements, terms covenants or conditions hereof on Tenant’s part to be performed, and such nonperformance shall continue for a period of 30 days after written notice thereof from Landlord to Tenant, or if such performance cannot be reasonably accomplished within such 30-day period, Tenant shall not have commenced in good faith such performance within such 30-day period or shall not have diligently proceeded therewith to completion.

10.2 Landlord’s Remedies. If any one or more Events of Default set forth above occurs then Landlord has the right, at its election:

- (a) To terminate this Lease, in which case Tenant’s right to possession of the Premises will cease and this Lease will be terminated as if the expiration of the Term fixed in such notice were the end of the Term, and all obligations of Landlord and tenant shall cease except as to Tenant’s liability as herein provided, and Tenant shall surrender the Premises and remove all of its Equipment. If this Lease is terminated, Landlord will be entitled to recover from Tenant: (1) the unpaid rent that had been earned at the time of termination; (2) the unpaid rent that had been earned at the date of the judgment awarding damages to Landlord (the “Date of Judgment”); (3) the unpaid rent for the balance of the Term of this Lease after the Date of

Judgment; and (4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result from that failure. The amount referred to in clauses (1) and (2) is computed by allowing interest at the highest rate permitted by law. The amount referred to in clause (3) is computed by discounting the amount at the discount rate of the Federal Reserve Bank of New York at the time of award.

(b) To cure any event of default and to charge Tenant for the cost of effecting such cure, including without limitation reasonable attorneys' fees and interest provided that Landlord will have no obligation to cure any such Event of Default of Tenant.

10.3 Remedies Cumulative. Landlord's rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by Landlord of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.

## ARTICLE 11 -- GENERAL

11.1 Casualty. If the Premises or a portion of the Tower on the Site necessary for Tenant's occupancy is damaged during the Term of this Lease by any casualty which is insurable under standard fire and extended coverage insurance policies, Landlord may, in its sole discretion, repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction. Landlord shall provide written notice to Tenant, within 30 days from the date of such casualty, detailing whether or not Landlord will rebuild or repair the Leased Premise. If Landlord repairs or rebuilds the Premises, Rent will be abated proportionately during any period in which there is substantial interference with the operation of Tenant's business. Notwithstanding the foregoing, if the Premises are damaged to the extent that it would take, in Landlord's reasonable judgment, more than 90 days to repair, then Tenant may terminate this Lease upon notice to Landlord. If Landlord elects not repair or rebuild the Premises, then this Lease will terminate upon notice to Tenant of Landlord's election.

11.2 Condemnation. In the event of a condemnation or other taking by any governmental agency of the Premises or a portion of the Site or the Tower necessary for the operation of Tenant's Equipment on the Tower, this Lease will terminate on the date the condemning authority takes possession of the Premises. The award for the Premises shall be paid to Landlord, except that Tenant will have the right to assert a separate claim against the condemning authority in a separate action, so long as Landlord's award is not otherwise reduced, for (i) moving expenses, (ii) business interruption, and (iii) leasehold improvements paid for by Tenant.

11.3 Effect of Sale. A sale, conveyance or assignment of Landlord's interest in the Site will operate to release Landlord from liability from and after the effective date of such sale, conveyance or assignment upon all of the covenants, terms and conditions of this Lease, express or implied, except those liabilities which arose prior to such effective date, and, after the effective

date of such sale, conveyance or assignment, Tenant will look solely to Landlord's successor-in-interest in and to this Lease. This Lease will not be affected by any such sale, conveyance or assignment, and Tenant will attorn to Landlord's successor-in-interest to this Lease, so long as such successor-in-interest assumes Landlord's obligations under the Lease from and after such effective date. Any such transfer or transfers of title or conveyances shall not disturb Tenant's rights under this Lease so long as Tenant is not in default under this Lease.

11.4 Subordination. This Lease and Tenant's rights under this Lease are subject and subordinate to any ground or underlying lease, mortgage, indenture, deed of trust or other lien encumbrance (each a "Superior Lien"), together with any renewals, extensions, modifications, consolidations and replacements of any such Superior Lien, now or after the Commencement Date affecting or placed, charged or enforced against the Site, or any portion thereof or any interest of Landlord in them or Landlord's interest in this Lease and the leasehold estate created by this Lease (except to the extent any such instrument will expressly provide that this Lease is superior to such instrument). This provision will be self-operative and no further instrument of subordination will be required in order to effect it. Notwithstanding the foregoing, Tenant will execute, acknowledge and deliver to Landlord, within 20 days after written demand by Landlord, such documents as may be reasonably requested by Landlord or the holder of any Superior Lien to confirm or effect any such subordination.

11.5 Estoppel Certificates. From time to time, and within 30 days after prior written request by Landlord to Tenant, Tenant will execute, acknowledge and deliver to Landlord, within 10 days after request, a certificate certifying (a) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification; (b) the date, if any, to which Rent and other sums payable under this Lease have been paid; (c) that no written notice of any default has been delivered to Landlord which default has not been cured, except as to defaults specified in said certificate; (d) there is no Event of Default or Landlord Default under this Lease, except for defaults specified in said certificate; and (e) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser or existing or prospective mortgagee or beneficiary under any deed of trust encumbering the Site. Tenant's failure to deliver such a certificate within such time will be conclusive evidence of the matters set forth in it.

11.6 Inspection. Landlord reserves the right to enter, at any time, the Premises to inspect the same.

11.7 Abandonment. If Landlord decides to abandon the Premises, it shall give prior written notice to Tenant at least 180 days in advance of such abandonment and this Lease will terminate on the date stated within such notice.

11.8 Assignment. Tenant shall not assign this Lease nor sublet any part or all of the Premises without the approval of Landlord, which may be unreasonably withheld in Landlord's sole discretion. This Lease shall otherwise inure to the benefit of and be binding upon the successors and assigns of the parties.

11.9 Limitation on Recourse. Tenant specifically agrees to look solely to Landlord's interest in the Site for the recovery of any judgments from Landlord. It is agreed that Landlord (and its shareholders, ventures, and partners, and their shareholders, ventures and partners and all of their officers, directors and employees) will not be personally liable for any such judgments.

The provisions contained in the preceding sentences are not intended to, and will not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord.

11.10 Quiet Enjoyment. Landlord covenants and agrees with Tenant that so long as Tenant pays rent and observes and performs all the terms, covenants, and conditions of this Lease, Tenant may peaceably and quietly enjoy the Premises, and Tenant's possession will not be disturbed by anyone claiming by, through, or under Landlord.

11.11 Late Payment Interest. If any payment required by this Lease is not made within 5 days after payment is due, a late rate charge of 18% per annum or the maximum rate allowed by applicable law, whichever is less, from the date on which it was due until the date on which it is paid in full with accrued interest.

11.12 Time of the Essence. Time is of the essence of each and every provision of this Lease.

11.13 No Waiver. The waiver by either party of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

11.14 Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given: (a) by United States first class mail, postage prepaid, registered or certified, return receipt requested, (b) by hand delivery (including by means of a professional messenger service), or (c) by a nationally recognized overnight delivery service that routinely issues receipts. Any such notice or other communication shall be addressed to the party for whom it is intended at its address set forth in Section 1, and shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

11.15 Landlord's Name. Tenant is prohibited from using Landlord's name, logo, mark or any other identifying symbol as a business reference, in advertising or sales promotion, or in any publicity matter without Landlord's prior written consent.

11.16 Disputes.

(a) Any claim, controversy or dispute, whether sounding in contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Lease, whenever brought, shall be resolved by arbitration as prescribed in this section. The Federal Arbitration Act, 9 U.S.C. Sections 1-15, not state law, shall govern the arbitrability of all claims.

(b) Notwithstanding the foregoing, at Landlord's option, the following claims, controversies or disputes need not be resolved by arbitration: (i) any action by Landlord that seeks repossession of the Premises as part of Landlord's remedy, (ii) any action by Landlord seeking an injunction or temporary restraining order, and (iii) any action by Landlord seeking any prejudgment remedy.

(c) The arbitration shall be conducted under the then current rules of the American Arbitration Association (the "AAA"). Where no disclosed claim or counterclaim exceeds \$500,000, exclusive of interest and attorneys' fees, there shall be one arbitrator, who shall be an attorney with at least ten years' experience in the commercial real estate field. In all other cases, there shall be three arbitrators, at least one of whom shall be an attorney with at least

ten years' experience in the commercial real estate field. Subject to the foregoing, the arbitrator or arbitrators shall be selected in accordance with AAA procedures from a list of qualified people maintained by the AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose, and all expedited procedures prescribed by the AAA rules shall apply.

(d) There shall be no discovery other than the exchange of information which is provided to the arbitrator or arbitrators by the parties. The arbitrator or arbitrators shall have authority only to award compensatory damages and shall not have authority to award punitive damages or other non-compensatory damages; the parties hereby waive all rights to and claims for monetary awards other than compensatory damages. The parties shall share equally the fees and expenses of the arbitrator or arbitrators. The non-prevailing party shall pay the reasonable costs and attorneys' fees of the prevailing party, as determined by the arbitrator. The decision and award of the arbitrator or arbitrators shall be final and binding, and judgment on the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

(e) If any party files a judicial or administrative action asserting claims subject to arbitration as prescribed herein, and another party successfully stays such action or compels arbitration of said claims, the party filing said action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorneys' fees.

11.17 Authority. Tenant and the party executing this Lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of the board of directors, or partners, as the case may be, and agree, upon request, to deliver to Landlord a resolution or similar document to that effect.

11.18 Counterparts. This Lease may be executed in counterparts, and when each of the parties hereto has executed and delivered one or more counterparts this Lease shall be binding and effective, even though no single counterpart has been executed by both parties.

11.19 Entire Agreement. This Lease embodies the entire agreement between the parties hereto relative to the subject matter hereof. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant.

11.20 Severability. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid or unenforceable, a provision will be added as a part of this Lease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

11.21 Captions. The captions of the various Articles and Sections of this Lease are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

11.22 Governing Law. This Lease will be governed by the internal laws of the state in which the Site is located, without reference to its conflict of laws provisions.

11.23 Recordation. Tenant shall not record this Lease or a memorandum thereof in the public records without the prior written consent of Landlord.

**EXECUTED** as of the day and year first above written.

**LANDLORD:**

**TENANT:**

\_\_\_\_\_

\_\_\_\_\_

Name:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_